

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Power to Detain

Section 812.015(3)(a), F.S., currently authorizes law enforcement officers¹, merchants², farmers³, and transit agency⁴ employees or agents who have probable cause to believe that a retail theft,⁵ farm theft,⁶ or trespass,⁷ has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.⁸ The statute further specifies that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be immediately called to the scene.

Innkeepers and food service establishment operators have the similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is engaging in

¹ Section 943.10, F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

² Section 812.015, F.S., defines the term "merchant" as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

³ Section 812.015, F.S., defines the term "farmer" as a person who is engaging in the growing or producing of farm produce, milk products, eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent.

⁴ Section 812.015, F.S., defines the term "transit agency" as any state agency, political subdivision of the state, or municipality which operates mass transit vehicles.

⁵ "Retail theft" means the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value. *See s. 812.015, F.S.*

⁶ "Farm theft" means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. *See s. 812.015, F.S.*

⁷ Section 812.015, F.S., defines the term "trespass" in accordance with s. 810.08, F.S.

⁸ In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody before detaining the offender.

disorderly conduct⁹ that threatens the safety of the person or others.¹⁰ In these situations, it is also required that law enforcement be called immediately.

Private, State-Licensed Security Officers

There are several classes of licenses issued by the Division of Licensing within the Department of Agriculture (Department). Section 493.6301, F.S., requires any person who performs the services of a security officer to have a Class “D” license. The requirements for a Class “D” security officer license are as follows:

- (a) An applicant for a Class “D” license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught.
- (b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:
 - Successful completion of the total number of required hours of training before initial application for a Class “D” license; or
 - Successful completion of 24 hours of training before initial application for a Class “D” license and successful completion of the remaining 16 hours of training within 180 days after the date that the application is submitted. If documentation of completion of the required training is not submitted within the specified timeframe, the individual’s license is automatically suspended until such time as proof of the required training is provided to the department.¹¹

Class “MB” security officers may manage a security agency. Class “MB” and “D” security officers are permitted to carry a firearm, but must obtain a Class “G” license in order to do so.¹²

Seaport security officers must have a Class “D” license and complete a specialized seaport security officer training curriculum.¹³

Private, State-Licensed Security Officers – Ability to Detain

Section 311.124, F.S., specifies that any Class “D” or Class “G” seaport security officer certified under the Maritime Transportation Security Act guidelines and s. 311.121, F.S., who has probable cause to believe that a person is trespassing in a designated restricted area pursuant to s. 311.111, F.S., is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer. Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Effect of the Bill

The bill authorizes licensed security officers and security agency managers who possess a valid Class “G” license, who are on duty and in uniform, and who are on the premises of their client, to temporarily detain a person who has committed or is committing a crime against a client or patron. The detention must be for the purpose of ascertaining the person’s identity and the circumstances of the crime. The bill specifies that temporary detention by a security officer may not extend beyond the place where it was first affected or the immediate vicinity thereof.

⁹ Disorderly conduct is described in s. 877.03, F.S.

¹⁰ s. 509.143, F.S.

¹¹ s. 493.6303(4), F.S.

¹² Class “G” officers have special firearm training requirements and are authorized to carry their firearms on duty. s. 493.6301, F.S.

¹³ The specialized seaport security officer training curriculum includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties. *See* s. 311.121, F.S.

The bill requires the security officer to notify the appropriate law enforcement agency as soon as reasonably possible. Additionally, the bill specifies that the security officer may only detain the person in a reasonable manner and only until a law enforcement officer arrives on the premises and is in the presence of the detainee. The bill specifies that a person may not be further detained upon the arrival of the law enforcement officer except under the authority of the responding law enforcement officer. Custody of the person being temporarily detained must be immediately transferred to the responding law enforcement officer for determination of appropriate disposition.

If the security officer has probable cause to believe the person being detained (or the person who is about to be detained) is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer or others, the security officer may conduct a search of the person and his or her belongings, only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals a weapon, the bill authorizes the seizure of the weapon and requires the security officer to give the weapon to the responding law enforcement officer. The bill specifies that in this context, the term "probable cause" means the observation of the security officer or an admission of the detainee that the detainee has a weapon in his or her possession.

The bill amends s. 493.6118, F.S., to specify that the Department take disciplinary actions against a security officer if the security officer commits an act of violence or use of force on any person except:

- In the lawful protection of one's self or another from physical harm; or
- In the process of a lawful detention of a suspect while awaiting the arrival of a law enforcement officer.

The bill conforms a cross-reference in s. 493.6115, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 493.6305, F.S., relating to uniforms, required wear; authority limitations.

Section 2. Amends s. 493.6118, F.S., relating to grounds for disciplinary action.

Section 3. Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 4. This bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably "under color of law," to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES